

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 905 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

MAHENDRA EXPORT INDUSTRIES - Appellant(s)**Versus****ASSTT. COMMISSIONER OF INCOME TAX - Opponent(s)****Appearance :**MR RK PATEL for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE****and****HONOURABLE MR.JUSTICE K.A.PUJ****Date : 27/03/2006****ORAL JUDGMENT**

Admit.

Heard learned advocate Shri B.D.Karia for the appellant and Mr.Tanvish U. Bhatt, learned Standing Counsel for the respondent. Looking to the facts of the case and in view of the request made by the learned advocates for hearing the appeal today, the appeal is finally heard today.

Looking to the facts of the case, in our opinion the following substantial question of law arises in this appeal:-

“Whether on the facts and in the circumstances of the case, the Tribunal has substantially erred in law in dismissing the contentions of the appellant on the aspect of validity of reopening of assessment in contravention of the ratio of the Hon'ble Apex Court in the case of National Thermal Power Company at 229 ITR 383 ?”

Upon hearing the learned advocates and looking to the contents of the order passed by the Tribunal, in our opinion the Tribunal has not considered the contentions which had been raised in the Written Statement filed by the appellant. It also appears that there is no discussion at all on the subject of validity of reopening of the assessment and in the circumstances, we are of the view that the Tribunal has not given proper reasons for

arriving at the decision which it has arrived at.

Mr.Karia has relied on the decision rendered in the case of Dahod Sahakari Kharid Vechan Sangh Ltd., vs. CIT (Guj.), reported in (2005) 149 Taxman 456 (Guj.), wherein it has been held by this Court that in case a party having succeeded before Commissioner (Appeals) opts not to file cross objection even when an appeal has been preferred by the other party, from that it is not possible to infer that the said party has accepted the order or the party thereof which was against the respondent. The Court further held that if the inference drawn by the Tribunal is accepted as a correct proposition, it would render Rule-27 of the Tribunal Rules redundant and nugatory. It is not possible to interpret the provision in such manner. Any interpretation placed on a provision has to be in harmony with the other provisions under the Act or the connected Rules and an interpretation which makes other connected provisions otiose has to be avoided. Rule-27 of the Tribunal Rules is clear and unambiguous. The right granted to the respondent by the said Rule cannot be taken away by the Tribunal by referring to provisions of Section 253(4) of the Act. We are, therefore, of the view that the Tribunal was in error in holding that the CIT

(Appeals) has justified the issue regarding reopening in favour of the department and the assessee has not raised appeal. This finding of the Tribunal is contrary to the law laid down by this Court in the above referred decision.

Looking to the facts of the case, in our opinion the matter deserves reconsideration and, therefore, we quash and set aside the order of the Tribunal so far as it pertains to validity of reopening of the assessment and we direct the Tribunal to hear the appellant and the respondent and consider all submissions which might be made on their behalf and to decide the said issue de novo.

The appeal therefore stands disposed of as allowed to the above extent with no any order as to costs.

(ANIL R. DAVE, J.) (K. A. PUJ, J.)

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